(32)

HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A./108 सन् 200 2

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 108 OF 2002

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

APPELLANT

1. Maha Sinh, aged 23 years S/o Sumer Sinh.

2. Motilal, aged 21 years S/o Shankar Sinh.

Occupation of Both appellants Agriculture, R/o Village Dugara P.S. Gaurela, Tah. Pendra Road Distt. Bilaspur (C.G.)

Versus

RESPONDENT

State of Chhattisgarh
Through P.S. Gaurela,

Present :
Mr. R.K. Sharma, counsel for the appellants.
Mr. Ashish Shukla, Govt. Advocate for the State.

ORAL JUDGMENT

(23th April 2007)

PER L.C. BHADOO, J

This appeal is directed against the judgment of conviction and order of sentence dated 24th November 2001 passed by 4th

(पीछे देखिये)

(88)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Additional Sessions Judge, Link Court, Pendra Road, Bilaspur (C.G.) in Sessions Trial No.207/2000 whereby the learned Additional Sessions Judge after holding the accused/appellants guilty for commission of the offence under Section 302, 201/34 of the IPC, sentenced each of them to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo six months R.I., to undergo R.I. for seven years and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months.

2. Case of the prosecution is that 19th March 2000 was the day of Holy festival. On that day the accused/appellants namely Mahasingh and Motilal along with their uncle Baljeer Singh (since deceased) had gone to the forest of Dhobghat to collect wood. After collecting some wood, they became tired, therefore, they were taking rest, on which deceased Baljeer Singh scolded them and asked them to collect wood. Thereafter, he slapped accused Motilal, on which accused Motilal attacked his uncle Baljeer Singh with axe on his head. Thereafter, accused Mahasingh also attacked him with axe on his head, as a result of which he fell down and started writhing in pain. After some time he succumbed to the injuries. Thereafter, both the accused persons set on fire the dead body of Baljeer Singh by putting it on the wood collected by them, thereafter they returned to their house. When the family members enquired from them about Baljeer, they replied that their

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	uncle has gone to his in-laws' house at village Jamdi. When Baljeer Singh did not return for few days, a search was made and Panchayat was convened. In the Panchayat on enquiry the accused persons made extrajudicial confession that when deceased Baljeer Singh slapped Motilal, Motilal attacked him with axe on his head and thereafter Mahasingh also attacked him with axe on his head, as result of which Baljeer Singh died, thereafter he was set on fire. The matter was reported in the Police Station Gourella by PW-1 Bandhuram, on which First Information Report (Ex.P/1) was registered. During investigation accused Mahasingh gave memorandum Ex.P/2, pursuant to which an axe was seized under Ex.P/5 and accused Motilal gave memorandum Ex.P/3, pursuant to which another axe was seized under Ex.P/4. The investigating officer reached the place where the dead body of Baljeer Singh was burnt and seized the human bones and ash, which were sent to the experts for medical examination. The same were thereafter sent to Medicolegal Institute, Government of Madhya Pradesh – Home (Police) Department Gandhi Medical College Building Bhopal, from where report (Ex.P/17) was received in which it was opined that bones are of human in origin and sex is male. 3. After investigation charge sheet was filed against the accused persons in the Court of Judicial Magistrate First Class, Pendra Road who in turn committed the case to the Sessions Judge,	

(पीछे देखिये)

(38)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bilaspur from where learned 4th Additional Sessions Judge, Pendra Road received the case on transfer for trial.

4. Prosecution examined 16 witnesses at the trial in order to establish the charge against the accused persons. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime in question.

5. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced each of the accused persons as afore mentioned.

6. We have heard Mr.R.K.Sharma, counsel appearing on behalf of the accused/appellant and Mr. Ashish Shukla, G.A. for the State/respondent.

7. Mr. Sharma, submitted that in this case there is no ocular or direct evidence and the whole case rests on the extrajudicial confession alleged to have been made by the accused/appellants before the Panchayat, which has not been proved by the prosecution, therefore, conviction of the accused/appellants on the basis of such extrajudicial confession cannot be sustained.

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. On the other hand, Mr. Shukla, counsel for the State supported the judgment of the trial Court.

9. We have heard learned counsel for the respective parties and perused the material available on record including the judgment of the trial Court.

10. Admittedly in this case, there is no direct or ocular evidence to connect the accused/appellants with the crime in question. The whole case rests on the circumstantial evidence. As per settled law in order to rest conviction based on the circumstantial evidence, as per the decision of Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220,** the circumstantial evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of

(पीछे देखिये)

(87)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

11. The prosecution has tried to establish the crime against the accused persons based on the extrajudicial confession which has been made by them before the Panchayat. In this case except PW-11 Mangal, all the witnesses have turned hostile and they have not supported the prosecution case. In order to rest conviction based on the extrajudicial confession the prosecution must establish that the extrajudicial confession made by the accused persons was voluntary and true. If we scrutinize the evidence of PW-11 Mangal, we find that this witness in his examination-in-chief has stated that Panchayat was convened at the residence of Patel, accused persons were present there, Patel did not ask anything from the accused persons in his presence, only Sarpanch Kaliram enquired from the accused persons, on which they said that they have committed the murder of their uncle by assaulting with axe. Both the accused persons also said that they have burnt the dead body near Dhobghat culvert in the forest. But in the cross-examination he has stated that the villagers were scared of Kotwar, Sarpanch and Patel and whatever is said by them, is accepted by the villagers. Sarpanch asked the accused persons that you have committed murder of your uncle, on which both of them nodded in

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

agreement. This witness has stated that in his statement before police (Ex.D/1) he stated that Sarpanch had enquired from the accused persons and if it is missing from his police statement, he cannot say anything.

12. The above evidence of PW-11 Mangal does not inspire confidence because in his police diary statement, he has stated that the enquiry was made by Patel, at whose house Panchayat was convened, whereas in the Court evidence he has stated that Patel did not ask any question from the accused persons, only Sarpanch of the village asked the accused persons that you have committed murder of your uncle, on which the accused persons, without opening their mouth, nodded in agreement. Therefore, in the first instance there is material contradiction between the police case diary statements and the Court evidence of PW-11 Mangal regarding extrajudicial confession. In the second place, in order to convict the accused based on the extrajudicial confession, the accused must confess their guilt clearly in so many words voluntarily, explain the manner in which they committed the crime but in this case as per the evidence of PW-11 Mangal, on being asked by Sarpanch from the accused persons that you have committed murder of your uncle, they simply nodded in agreement without saying any word. This witness himself has stated in his cross-examination that normally the villagers being scared of Kotwar, Sarpanch and Patel, accept the suggestions given by them.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, we are of the considered opinion that the above evidence of PW-11 Mangal does not satisfy the requirement of law that the extrajudicial confession was made by the accused persons voluntarily and truly.

13. As far as recovery of human bones and ash from the forest is concerned, bones and ash have been recovered from an open place and the prosecution witnesses have stated that at the time of recovery the accused persons were not with the investigating officer, therefore, based on such a weak type of evidence, the accused persons cannot be connected with the crime in question.

14. For the foregoing reasons, we are of the considered opinion that the prosecution has not been able to establish the offence against the accused/appellants regarding commission of murder of Baljeer Singh and concealing the evidence in order to screen themselves from the legal punishment.

15. In the result, the appeal succeeds. Conviction and sentence imposed upon the accused/appellants under Sections 302, 201/34 of the IPC are set aside. They are acquitted of the above charges. It is stated that they are in detention since 29th March 2000, therefore, they be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

(पीछे देखिये)